

A Court-Supervised Debt Moratorium and Restructuring Process

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Temporary Suspension of Debt Payment Obligations

Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang – “PKPU”*) may be submitted by debtor or creditor to enable the debtor to present a composition plan that includes an offer to pay all or part of their debts to unsecured creditors.

The Court shall, within no later than 3 (three) days as of the date of registration if the petition is filed by debtor and no later than 20 (twenty) days if by creditor, i) grant Temporary Suspension of Payment; ii) appoint a Supervisory Judge; iii) appoint 1 (one) or more administrators who shall manage the debtor’s assets.

Immediately after the decision on the Temporary Suspension of Payment is stipulated, the Court, through the Administrator, must summon the Debtor and the known Creditors to appear at the session which shall be held not later than on the 45th (forty fifth) day after the decision on the Temporary Suspension of Payment was rendered.

This means that the session can also be held before the 45th (forty fifth) day after the decision and the Temporary Suspension of Payment shall be effective as of the date of stipulation and shall continue until the date of the session. If the Debtor fails to appear before the hearing, Temporary Suspension of Payment shall be terminated and the Court shall declare the Debtor bankrupt in the same hearing.

The appointed administrator must immediately announce the decision of Temporary Suspension of Payment in the State Gazette and at least in 2 (two) daily newspapers. Afterwards, the Debtor may propose a composition plan includes payment terms and timelines to be approved by all creditors in the session.

Temporary Suspension of Payment is designed to protect unsecured creditors, instead of secured creditors and privileged creditors which their claims are secured with lien, fiduciary security, security rights, mortgage or other collateral rights on property.

As a consequence of Temporary Suspension of Payment to the existing executed contract, the party with whom the Debtor had contracted may request confirmation from the administrator with regard to the continuation of the performance of such contract within a time period to be consented by the administrator and such party. If within certain time period the administrator has not responded or is not willing to continue the performance of such contract, the contract shall be terminated and the party may claim its damages as unsecured Creditor.

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In case of the unsecured Creditors have not voted on the composition, the Creditors shall decide to grant or refuse a Permanent Suspension of Payment. If the Permanent Suspension of Payment is approved, such Suspension of Payment and the extension thereof shall not exceed 270 (two hundred and seventy) days after the decision on the Temporary Suspension of Payment is stipulated.

However, if the Court fails to decide the Permanent Suspension of Payment within the period of 45 (forty five) days after the decision on the Temporary Suspension of Payment was rendered, the Debtor shall be declared bankrupt.

Permanent Suspension of Debt Payment Obligations

In the event of the Temporary Suspension of Debt Payment Obligations is terminated because the unsecured Creditors do not agree to the granting of a Permanent Suspension of Payment or an extension thereof, but at the 270th (two hundred seventieth) day an agreement has not been reached regarding the composition plan, then the Court shall declare the Debtor bankrupt.

The granting of a Permanent Suspension of Payment and the extension thereof shall be stipulated by the Court based on:

- a. the approval of more than 1/2 (a half) of the unsecured Creditors whose rights are admitted or temporarily admitted who are present and represent at least 2/3 (two-thirds) of all claims admitted or temporarily admitted of unsecured Creditors or their Attorney-in-fact who are present in the session; and
- b. the approval or more than 1/2 (a half) of unsecured Creditors whose accounts receivables are guaranteed by lien, fiduciary security, security right, mortgage, or other collateral rights on property, which are present and represent at least 2/3 (two-thirds) of all claims of the unsecured Creditors or their Attorney-in-fact who are present in the session.

Based on the previous provisions, essentially, Permanent Suspension of Payment and the extension are given by the unsecured Creditors, and not by the Court. The Permanent Suspension of Payment is granted by the unsecured Creditors based on the agreement among the Debtor and the unsecured Creditors regarding the composition plan proposed by the Debtor. The Court only stipulates a confirmation decision of approval and agreement between the Debtor and the unsecured Creditor.

At the end of Permanent Suspension of Payment or its extension period, the Debtor who cannot fulfill the agreed composition plan shall be declared bankrupt by the court in a creditors meeting. At this meeting, the Court shall appoint a Supervisory Judge and a Curator to manage and settle the bankruptcy estate.

As part of debt settlement mechanism under the Indonesian Bankruptcy Law, Suspension of Debt Payment Obligations is constructed by the Indonesian authority to mediate debtor and creditors on the outstanding debts under supervision of the Indonesian commercial court.